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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,319	04/18/2001	Gary Stephen Shuster	409475-30	8357

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EXAMINER	
CHOUDHURY, AZIZUL Q	
ART UNIT	**PAPER NUMBER**
2145	

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/837,319	SHUSTER, GARY STEPHEN	
	Examiner	Art Unit	
	Azizul Choudhury	2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 November 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *18 April 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *2/21/02*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Detailed Action

This office action is in response to the correspondence received on November 1, 2004.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as obvious over Kalkunte et al (US Pat No: US005854900A), hereafter referred to as Kalkunte.

1. With regards to claims 1 and 11, Kalkunte teaches a method (a system is able to be a method), for operating a network server to discourage use that disproportionately depletes server resources such as distribution of large media files, wherein the server is connected to a plurality of client devices, and configured to transfer information between selected ones of the client devices and a memory for static storage of information, said method comprising the steps of: receiving a request to transfer a file between the memory and one of the plurality of client devices; removing a packet of information from the file after said receiving step, the packet of information comprising a defined number of information bits; transferring the packet of information between the memory and the one of the plurality of client devices after said removing step; pausing for a defined delay period after said transferring step wherein the defined delay period is determined

based on characteristics of the file being transferred; repeating said removing step, said transferring step, and said pausing step in order until all of the file has been transferred (The claimed steps are all known to occur in data transfers in networks. This is especially true for networks that use the TCP/IP protocol. Kalkunte teaches a network design that uses the TCP/IP protocol (column 9, line 43, Kalkunte). In addition, Kalkunte's design allows for the adding of delays to the transfer of packet. Plus, Kalkunte's design takes the file size (column 4, lines 61-63, Kalkunte) which is a characteristic. Such size information must be used in the calculation of delays to prevent too many packets (larger the size, the more packets) from being needlessly sent out in a crowded network path).

2. With regards to claims 2 and 12, Kalkunte teaches a method (a system is able to be a method), further comprising increasing the defined delay period after each execution of said pausing step (Kalkunte's design allows for delay periods, including defined delay periods as claimed (column 3, lines 9-61, Kalkunte)).

3. With regards to claim 3 and 13, Kalkunte teaches a method (a system is able to be a method), further comprising setting the defined delay period to a selected predetermined value after each execution of said pausing step (Kalkunte's design allows for delays to be set to a predetermined value as claimed (column 3, line 20, Kalkunte)).

4. With regards to claims 4 and 14, Kalkunte teaches a method (a system is able to be a method), further comprising initializing the defined delay period to a calculated value prior to said removing step (Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). No limitation is set as to where they delay must occur, it simply must occur so that the packet is delayed in its transmission).

5. With regards to claims 5 and 15, Kalkunte teaches a method (a system is able to be a method), further comprising initializing the defined delay period to a selected predetermined value prior to said removing step (Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). No limitation is set as to where they delay must occur, it simply must occur so that the packet is delayed in its transmission).

6. With regards to claims 6 and 16, Kalkunte teaches a method (a system is able to be a method), further comprising setting the defined delay period to a calculated value after each execution of said pausing step (Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte). No limitation is set as to where they delay must occur, it simply must occur so that the packet is delayed in its transmission).

7. With regards to claims 7 and 17, Kalkunte teaches a method (a system is able to be a method), further comprising determining the calculated value from at least one input parameter selected from the file size, or file type (Kalkunte's design allows for the

delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte). Kalkunte's design also allows the calculations to be formulated using network factors, as claimed. Plus, Kalkunte's design takes the file size (column 4, lines 61-63, Kalkunte). Such size information must be used in the calculation of delays to prevent too many packets (larger the size, the more packets) from being needlessly sent out in a crowded network path. No limitation is set as to where they delay must occur, it simply must occur so that the packet is delayed in its transmission).

8. With regards to claims 8 and 18, Kalkunte teaches a method (a system is able to be a method), further comprising setting the defined number of information bits in the packet of information to a calculated value after each execution of said pausing step (Kalkunte's design allows for network data transfers using packets. Networks allow the size of the packets to be set as claimed. Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte). Kalkunte's design also allows the calculations to be formulated using network factors, such as packet size, as claimed. No limitation is set as to where they delay must occur, it simply must occur so that the packet is delayed in its transmission).

9. With regards to claims 9 and 19, Kalkunte teaches a method (a system is able to be a method), further comprising setting the defined number of information bits in the

packet of information to a selected predetermined value after each execution of said pausing step (Kalkunte's design allows for network data transfers using packets. Networks allow the size of the packets to be set as claimed. Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte). Kalkunte's design also allows the calculations to be formulated using network factors, such as packet size, as claimed. No limitation is set as to where they delay must occur, it simply must occur so that the packet is delayed in its transmission).

10. With regards to claims 10 and 20, Kalkunte teaches a method (a system is able to be a method), further comprising initializing the defined number of information bits in the packet of information prior to said removing step (Kalkunte's design allows for network data transfers using packets. Networks allow the size of the packets to be set as claimed. Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte). Kalkunte's design also allows the calculations to be formulated using network factors, such as packet size, as claimed. No limitation is set as to where they delay must occur, it simply must occur so that the packet is delayed in its transmission).

Remarks

The amended claims and remarks received on November 1, 2004 have been carefully reviewed but are not deemed fully persuasive. The applicant's representative

remarks that the delay time in the Kalkunte prior art cannot be increased. The examiner disagrees since the delay interval is calculated as a multiple to minimize collisions (i.e. increase delays) (column 3, lines 45-50, Kalkunte). As for the amendments, they point to file size being used in the claimed design. The Kalkunte design uses TCP/IP, which uses file size to determine the number of packets and size of packets. This is further enforced in the prior art (column 4, lines 58-63, Kalkunte). When a calculation is performed, more than one value must be used. With time being one of those values (column 3, lines 45-50, Kalkunte) and the data size being retrieved in the design (column 4, lines 58-63, Kalkunte). It is inherent that the data size is a characteristic and is a factor in calculating the delay size.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Azizul Choudhury whose telephone number is (571) 272-3909. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on (571) 272-6159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AC

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